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## **2001-2002 MARIN COUNTY GRAND JURY**

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**TITLE OF REPORT: Special Education in Marin**

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Date of Report: April 26, 2002

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## **SPECIAL EDUCATION IN MARIN**

### **SUMMARY**

Prior to 1975 most children with special educational needs received little or no help from the public school systems of America. The situation changed that year when Congress passed a law now known as the Individuals with Disabilities Education Act, or IDEA. A child with a handicap was to have a "free appropriate public education." IDEA expanded the definition of disabilities far beyond the usual understanding. Children with special needs were now not only the blind, the deaf, the crippled and the mentally deficient; they were children with reading, math, listening and speech disorders amongst other conditions -- thirteen categories in all. The law said each child was to have an Individualized Education Plan. The program was called Special Education.

Such was the mandate, and many procedures and conditions were part of the law. The Congress said it would fund up to 40% of the cost, but has never provided more than 17%. The mandate is firm and unbending, but the funding was not and is not.

There is not enough federal and state funding to cover Special Education costs. The difference comes from the school districts' general funds, designated for mainstream education of the student body. Last school year almost 24% of Special Education funding in Marin, over \$10 million, came from the general funds.

Currently, fourteen percent of Marin public school children (4,044 students) are in Special Education compared to a statewide average of ten percent. Marin parents are better educated, better off, and not easily intimidated by bureaucracies. This may be the reason for what some call "over identification," which brings with it the extra services and parental control that are part of Special Education, and not part of mainstream education. Attorneys are sometimes involved, and their fees can be substantial.

School district administrators feel under siege because of lack of money, and because of some few aggressive parents who appear to push to the outer limits for an "appropriate" education for their children. Teachers are so entangled with the law, that some leave, and of those, a few become lawyers themselves.

The Grand Jury recommends: That the Marin County Office of Education make the citizens of Marin aware of the scope of Special Education, and of the fact that Special Education affects mainstream students as well as children with disabilities; that Alternate Dispute Resolution training be accelerated to keep the lawyers at bay; that assessing for disabilities be centralized as much as possible; that an ombudsman be appointed to help resolve disputes before they become "them and us" situations; and that the school superintendents' legislative committee gear up its lobbying efforts for more state and federal funding.

## **BACKGROUND**

This report has its beginnings in two events: the one, a complaint to the Grand Jury by the parent of a Special Education student; the other, the discovery that in all its 27-year history, federally mandated Special Education has never been studied by a Marin County Grand Jury, save for a very brief report several years ago. This, then, is an attempt to describe the world of Special Education and to make a few recommendations along the way. The topic is administratively complex, intellectually challenging and emotionally charged. The Grand Jury has done its best to simplify the complexity, meet the intellectual challenge and acknowledge the emotional charge. It makes no claim for completeness; that would require a rather large book, *War and Peace* size. Above all, this is a report written by laymen for laymen, in the hope that public awareness of some key issues will further an outstanding education for all our children.

## **METHODOLOGY**

### **Interviews Conducted**

Twenty-three persons were interviewed in the course of the investigation. The group included officials of the Marin County Office of Education (MCOE) and the Marin Special Education Local Plan Area (SELPA), parents of Special Education children, School District Superintendents, an academic in the field of Special Education, a SELPA official in another Bay Area County, a SELPA Program Manager, Special Education teachers, the head of a parent support group, California State Department of Education officials and attorneys representing both school districts and parents.

### **Sites Visited**

- The Technology Resource Center of Marin.
- The Marindale Santa Margarita School for pre-school Special Education children ages three to five.

### **Meeting Attended**

- Special Education Advisory Committee

### **Documents Read**

- Parent Handbook (Marin SELPA)
- Eligibility Handbook (Marin SELPA)

- “SELPA Review and Analysis” (a study commissioned by the Operational Steering Committee of the Marin SELPA, May 1998)
- Special Education Rights of Parents and Children (California Dept. of Education)
- Special Education Local Plan Area (an explanatory booklet by the Marin SELPA)
- “Special Education Funding” (an informational release by California Statewide Education Organizations)
- Special Education Rights and Responsibilities (handbook of the Community Alliance for Special Education-CASE)
- “Special Education Law Update”, February 2002 (a professional periodical)
- “The Special Edge”, Autumn 2001 (California Department of Education periodical)
- “All about Matrix” (an explanatory document about this parent support group)
- “California’s Dispute Resolution System: Innovation and Excellence” (a print version of a slide presentation sponsored by the Consortium for Appropriate Dispute Resolution in Special Education – CADRE)
- Various budget documents and other data produced by the MCOE, the Marin SELPA and the school districts.

## **COMMENDATION**

Time and time again, the Grand Jury heard “There are no bad people in Special Education” and “We all want what is best for the child.” Those comments came from across the board---parents, teachers, administrators, support groups and attorneys. None questioned the why, but there was sometimes dissent on the how. These are dedicated people who often display grace under pressure, in very difficult circumstances.

## **DISCUSSION**

### **Before The Law**

Prior to 1975 most students in need of special educational services were ill served. In fact, some disabled children were not served at all, and in 43 states less than half of

children with disabilities received an education.<sup>1</sup> Here was fertile ground for legislation. Congress acted.

### **The Law**

In 1975 President Gerald Ford signed Public Law 94-142. With some revisions it is now known as the Individuals with Disabilities Education Act, or IDEA. In its essential form it guarantees to children with disabilities, a “free appropriate public education” with “related services”, if necessary, in the “least restricted environment.” The age range is birth to twenty-two. In the shorthand of bureaucracy, the process is called Special Education. President Ford signed the bill with misgivings and spoke of the “vast array of detailed, complex and costly administrative requirements” and “authorization levels which are excessive and unrealistic.” This Grand Jury study confirms his remarks.

### **Special Education? For Whom?**

The answer is for far more students than you might think. Although there are almost as many opinions as there are people in Special Education, all agree on this: the general public has no idea how inclusive the definition is. Here are the thirteen federally mandated disability categories which call for Special Education:

Autism	Mental retardation	Speech or language
Deafness	Multiple disabilities	Impairment disorder
Deaf-blindness	Orthopedic impairment	Traumatic brain injury
Emotionally disturbed	Other health impairment	Visual impairment
Hard of hearing	Specific learning disability	(Including blindness)

Several of the categories commonly thought of by the general public as describing most Special Education students are classified as low incidence disabilities. They are hearing impairment, deaf-blindness, blindness and orthopedic impairment. Together they accounted for only 4.6% of all children in Special Education in Marin on Dec. 1<sup>st</sup> of last year. Conversely, the speech and language impairment category was 31.9% of the total, and specific learning disability 45.1% - taken together 77% of all disabilities.

The specific learning disability classification deserves a clarification. Oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation and mathematics reasoning all fall within its purview. Of the twenty pages devoted to describing disabilities in the Eligibility Handbook, four are used for this category alone, followed by three pages for speech and language impairment.

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<sup>1</sup>From an article in “Special Education Law Update”, February 2002. The article was based on a presentation by Elena M. Gallegos, attorney with Walsh, Anderson, Brown, Schulze & Aldrige, at the Education Law Association’s 47<sup>th</sup> Annual Conference in Albuquerque, New Mexico on Nov. 17, 2001. The comments by President Ford in the following section are also from that article.

The third most common disability is, sadly enough, the emotionally disturbed, which has risen from 299 children (7.2% of the total) to 362 (8.9%) over the last three years, a disturbing trend.

In Marin, 4,044 out of approximately 28,750 students, or 14% of all public school children, are in Special Education (Appendix A). Statewide, 10% of the school population is classified as Special Education.

### **Who says a child needs Special Education?**

The short answer is lots of people; it is no one person's decision to make.

Part of the federal law makes it mandatory to use every reasonable means (e.g. pediatrician referrals) to find children in need of Special Education. Called child-find, it is particularly important to children in the three to five age group who can benefit from the pre-school program run by the Marin County Office of Education at the Marindale Santa Margarita School.

Once a pre-school child is found, or a child already attending regular school is tentatively identified as having special needs, a protocol comes into play that is also governed by state and federal law. The school district must use general education resources, such as study teams, before it makes a request for an assessment--- and the parent must agree or the assessment does not take place. On the other hand, a parent may ask for an assessment at any time, and the school, using a strict timetable, must honor the request. Here, then, is the first ramification of what one attorney described as the driving force behind Special Education; it goes by the name of Parental Consent. Without it very little happens, and as one educator put it, true or not, "Special Ed parents have more power than anybody in the world."

Trained professionals carry out assessments—teachers, psychologists, medical doctors, whoever is appropriate for the task at hand. There are 75 public schools in Marin within the existing 19 school districts, all of them with their own assessment teams. Several sources have told the Grand Jury that the quality of the teams is uneven. Frequently outside assessors are called in, sometimes by the schools, sometimes by the parents, with the schools frequently footing the bill for both. Contested assessments can lead to very expensive (to the school district) due process proceedings. Training in proper assessment skills is essential.

Compiled hard data is sometimes difficult to find in Special Education, but education officials estimate that eighty to ninety percent of all assessments result in a Special Education program.

### **The Individualized Education Plan or IEP**

The law requires that every one of the 4,044 Special Education students in Marin public schools this year has an IEP, tailored to his or her needs. Here is how it works:

Once a child has been assessed as one with special needs, a team is assembled and an Individualized Education Plan is created. Its participants may vary, but a parent must always be a member of the team, unless the parent chooses not to attend. The plan covers more than academics. If other services are necessary for the child to benefit from Special Education, the school must provide them as part of the plan. Examples are transportation, counseling, physical therapy and school health services, among many more. As much as possible, the child should participate in the everyday life of the school, as a member of the general student body. But it can also mean sending the child to a special school in another state at the school district's expense, if that is what an appropriate education calls for. All this is incorporated into a formal document, which must have the parent's approval and is the essence of Special Education for a specific child. Thus are fulfilled the federal and state mandates of a free appropriate public education in the least restricted environment.

Would it were so simple!

### **Enter the SELPA**

No school district, or for that matter county office of education, could be expected to effectively oversee and administer the labyrinth of Special Education, with its rules and mandated protocols, without undermining its responsibilities for the general education of all students in its care. Add to these challenges the emotional climate, which accompanies much of Special Education, and the need for a separate agency to oversee the process is apparent.

Thus were born Special Education Local Plan Areas or SELPA's, created by the State of California. Some SELPA's cover several counties; some, as in Los Angeles, only part of one; others a single county, as is the case in Marin. Each SELPA is tailored to the community it serves.

Here, from the Marin SELPA Parent Handbook, is a definition:

"In California administrative responsibility for special education may cut across district lines to form units which best respond to area needs. The SELPA monitors the development of instructional programs that meet the individual handicapped child's learning need and enables the child to be educated in the least restrictive environment."

A representative committee of the 19 School District Superintendents and the County Superintendent of Schools employ the executive director of the Marin SELPA. His position is similar to that of the baseball commissioner or the head of the Motion Picture Association. He can monitor, advise and speak sternly to all, including the county office of education (a de facto twentieth school district), in his role as keeper of Special Education. He influences but does not dictate.

When disputes arise between parent and school district, the SELPA should be viewed as a neutral third party, representing both evenhandedly. That is not an easy task in

Marin where, at present, the SELPA is quartered in the middle of the Marin County Office of Education and appears to be part and parcel of the MCOE.

Especially important is the role SELPA can play in training for correct assessment, IEP procedures and Alternate Dispute Resolution (ADR), a group of techniques used to avoid formal adversarial procedures.<sup>2</sup> The last is a very critical issue because of the enormous legal costs sometimes incurred in responding to parents who are unhappy with their child's assessment or IEP and who, with the help of a willing attorney, begin due process proceedings.

Due process can start with mediation (which is not binding) or go directly to a hearing officer whose decision is binding, unless of course, either the school district or the parents decide to go to federal court. Even before a court appearance, this can be a long and tortuous path, measured in months and tens of thousands of dollars.

ADR, on the other hand, is a bundle of techniques and attitudes designed to resolve parents' complaints quickly and fairly for all, without the services of attorneys. There will be more on this sensitive topic later in the report.

## **Parents**

The Grand Jury believes that the SELPA Parent Handbook recognizes through its advice and compassion, the emotional nightmare that parents experience when they learn that their child has a learning, mental or physical disability. Support organizations like Matrix help parents through those difficult days and guide them through the Special Education maze.

As noted earlier, some 14% of all public school children in Marin are classified as children with special needs, higher by 40% than the rest of the state. This discrepancy is not unusual in other communities around the country with similar demographics. Marin parents, as a rule, are well educated and earn more than most, and have the background and wherewithal to fully use a system which puts enormous power into their hands as parents of children who are judged to have disabilities.

Several administrators and attorneys made a point of saying to the Grand Jury that mainstream students have a right to "a free public education" with no parental right of control, while Special Education students are given "a free appropriate public education" with almost absolute parental control. It is easy to imagine a parent whose child has a reading problem attempting to place him or her into a Special Education program for the

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<sup>2</sup> These include but are not limited to:

Negotiation – Disputing parties attempt to resolve the issues through direct discussions.

Ombudsman – A neutral 3<sup>rd</sup> party investigates the issues in an attempt to bring about a resolution.

Mediation – A neutral 3<sup>rd</sup> party brings the disputants together to reach agreement on a plan of action.

Arbitration – A third party is brought into a dispute to listen to both sides. The arbitrator makes a decision on how to resolve the dispute. The parties or the law make the decision binding or non-binding.

Med-arb – Mediation is attempted and if it fails, the mediator makes a binding or non-binding decision.



free services and control that go with it. The result is labeled “over identification.” Or perhaps it is the rest of the state that is “under identifying.”

But most parents work with the schools without a lot of turmoil. As an example, one district has a Special Education population of 350 students. Of those, the parents of just 10 children seem to be in the forefront, calling for additional services.

The Grand Jury makes no judgment here; it merely records the facts.

### **The teachers**

Marin is different from other counties. All of its Special Education teachers are accredited; not so in many other counties. This is a good place to be if you are parents of a child with special needs. And although there is no hard evidence, it is claimed families move here to take advantage of the available expertise.

But, school superintendents told the Grand Jury that Special Education teachers are harder and harder to find. One said that he had been seeking a qualified speech therapist for months, with no luck.

One reason for the shortage cuts to the heart of the problem: the infinite number of legal requirements that are an open invitation for parents who want to challenge assessments and IEP's, not to mention day to day teaching. As one of our interviewees put it, teachers go into the system “thinking they would help change people's lives, and end up disheartened and disillusioned.” Hearing this, others never enter the system.

For educators, IEP meetings can become fearful and overcautious encounters, and it is almost impossible to create an IEP without an error of some sort, used later, perhaps, as the basis of a compliance complaint. Worse yet, the courts have begun to entertain the idea of personal liability suits brought against Special Education teachers. As one administrator told the Grand Jury, “Conflict should not be standard fare for the teaching profession!”

So teachers leave the system and some, because they have become so entangled with the law as Special Education teachers, become attorneys specializing in Special Education.

### **The administrators**

Under siege, beleaguered and bedeviled are the words to describe most, if not all, school superintendents and their lieutenants when it comes to Special Education. Many become resigned to the constant pressures that go hand in hand with educating children with special needs. At times, they give in to yet another parent demand because it costs less than going into due process, with its certain lawyer's fees, even though the law is on their side.

Marin is not unique. One state official attending a national Special Education convention in New Orleans last year was struck by those very same attitudes, displayed by administrators from all over the country.

Aside from the time spent in dealing with the legal requirements of the system and the small group of parents who want the very, very best for their children and know how to make themselves heard, school districts are faced with skyrocketing Special Education costs and daunting legal fees. The Grand Jury examines both in the following segments.

### **Where the money comes from**

In the last school year \$42,780,578 was spent on Special Education in Marin. Put another way, that's an average of \$10,692 for each child in the program. The state and federal governments both contributed to the money pot. It follows then, that because they mandate Special Education requirements, their combined contributions should have covered Special Education costs. Not so. They mandate very well, and fund not so well.

This is not the place to try to explain government funding formulas. In truth, we could not. Suffice it to say that the federal branch agreed to fund up to 40% of the total cost. The state bases its reimbursement formula on the assumption that 10% of the student body is in need of Special Education. In practice, the feds have funded no more than 17% each year, and, as for the state, we know Marin has 14%, not 10%, of its children in Special Education.

Who makes up the shortfall? Each district must --- from its general fund, whose purpose it is to fund the education of the general student population. The MCOE estimates that in the 1997-98 school year, an average of \$240 per student, earmarked for general education, went to Special Education. Last year the number was \$378, an increase of 57.5% per student. The total contribution from the districts came in at \$10,256,588, a smidgen shy of 24% of the total Special Education expenditure and almost 5% of the entire general fund (see Appendix B for more 4-year comparisons). The law of unintended consequences is hard at work here; a system designed to help children with special needs, instead pits mainstream education against special education and the latter always wins because the law mandates that it must.

No wonder one of the educators the Grand Jury interviewed almost yelled, "School districts are going broke because of Special Ed!" It was a feeling echoed several times in later meetings.

And, no wonder the school superintendents have a committee devoted to legislative action and better funding for all education. Strange indeed! Perhaps the time is out of joint.

### **And now the lawyers**

There are attorneys whose specialty is Special Education law. Some represent school districts, and others parents. Some parents are themselves attorneys. All are trying to do their best for the children they represent. And they all charge fees. The Grand Jury could not get a comprehensive list of legal fees and judgments for all the districts, but for five examples of district legal expenses see Appendix C. In fairness, it must be said some small districts have no legal fees, but others, as Appendix C shows, are quite substantial.

Although some legal costs can be incurred in IEP proceedings, most are the result of adversarial relationships sometimes leading to court cases. It stands to reason, then, that the fewer the hearings and the fewer the court cases, the fewer the attorneys' fees.

Mediations and hearings produce winners and losers, not a good thing when the welfare of a child is at stake.

### **Keeping it in the family**

Parents entering the Special Education system are understandably confused and upset. They can feel very much alone. The Grand Jury, with no emotional stake in the process, confesses to being almost overwhelmed by the experience.

Both parents' advocates and school districts say communication is vital. Parents new to Special Education must be immediately embraced and surrounded by those who know the way, not just tolerated by them. Sensitivity, and the sometimes lack of it, is an issue also mentioned by both district and parent advocates. Parents should be part of the team, a family, and right from the beginning.

When problems do arise, the techniques of Alternate Dispute Resolution are used more and more often. Based upon early involvement of the parent, their use can avoid the adversarial relationships that produce due process proceedings --- and legal fees. The concept of the ombudsman, the disinterested third party who listens to both sides, then tries to settle the dust, is one example. In the first year of use in Sonoma County, four of six cases were resolved by an ombudsman, without due process. Another technique is using a Solutions Team to "repair relationships for now and the future with no winners or losers." Recognizing the importance of these methods, the new, well-regarded Marin SELPA director arranged for a very highly commended ADR seminar for his staff.

He has also developed a Five-Year Strategic Plan that calls for a staff psychologist, and a Staff Development Specialist, both of whom should help in keeping it all in the family.

## FINDINGS

1. The scope of Special Education is generally believed to be unknown to the public at large. Public awareness of the impact Special Education funding has on the entire public school system is a first step to effective advocacy for a new funding policy. It is not just *those* children; it is *all* our children who are affected.
2. Assessments are the entry vehicle into Special Education. There are 75 public schools in Marin within the 19 school districts, each with its own assessment team augmented by the Special Education Local Plan Area (SELPA) and Marin County Office of Education (MCOE) staff on occasion. With that number it is no surprise that the quality of assessments can be uneven; here wait 75 opportunities for potentially expensive mistakes.
3. There is no easy or simple definition for a SELPA. The Grand Jury doubts that, even among administrators, there is consensus on its role. Its present physical location in the middle of the MCOE offices further obscures its function as an independent third party standing between parents and system.
4. There is an increased awareness of the importance of Alternate Dispute Resolution, especially with the arrival of the new SELPA director. A new proposed Five-Year Strategic Plan, calling for a staff psychologist and staff lawyer, will strengthen the role of the SELPA in assessments, Individualized Education Plans and due process. Additional training in assessment procedures for Special Education teachers should also lead to fewer legal fees.
5. The Grand Jury found a desire for an ombudsman among those we interviewed. We were told at least three times that the appointment of an ombudsman, would be an effective and welcome development. The appointment of this person, hired by a non-profit organization not connected with either MCOE or SELPA (but funded by SELPA), would be a good, immediate step as the Strategic Plan kicks in.

## RECOMMENDATIONS

1. The MCOE and all school districts should inform the general public about the role of Special Education in the public schools, the range of services available to children with special needs, and the dedication of the teachers of those children.
2. The MCOE and all school districts should inform the public that federal and state funding is inadequate, and that the shortfall forces school districts to divert money intended for mainstream education into federal and state mandated Special Education.

3. The Marin County Schools Legislative Advisory Committee, in coordination with all school districts, should continue and intensify its lobbying efforts in Sacramento and Washington for adequate funding for Special Education and, as a result, mainstream education as well.
4. SELPA and all school districts should give serious consideration to centralizing the assessment process as much as possible, while still maintaining the personal touch necessary for good assessments. At the very least there should be, as one of our respondents described it, "an organizing principal" behind every assessment.
5. The SELPA staff should be housed outside the core of the MCOE offices -- if not in a separate location, then at one end of the building with its own entrance to the street, if possible. Being so situated would enhance the perception of independence from MCOE.
6. The Grand Jury urges all school districts to give the new SELPA Director and his staff all the help it can offer to complete the proposed Five Year Strategic Plan as scheduled.
7. The Grand Jury most strongly recommends the continued pursuit by SELPA of Alternate Dispute Resolution techniques, which, properly applied, can significantly reduce legal costs to most school districts. Supplemental funds for that purpose are available from the state office of education upon application.
8. The Grand Jury recommends that the Marin SELPA considers the creation of the position of Ombudsman, similar to those established in the Sonoma County SELPA and others.

## REQUEST FOR RESPONSES

Pursuant to California Penal Code Section 933.05, the Grand Jury respectfully requests responses as follows:

<u>MCOE</u>	Findings 1 thru 4	Recommendations 1,2,4,5,6
<u>All County School Boards</u>	Findings 1,2,4,5	Recommendations 1,2,3,4,6
<u>SELPA</u>	Findings 2,3,4,5	Recommendations 4,5,6,7,8

In addition, the Grand Jury invites responses from The Marin County Schools Legislative Advisory Committee on Findings 1 and 2; and Recommendations 1,2 and 3.

## Appendix A

### Special Education Enrollment as a Percentage of Total Enrollment

	Total Enrollment	Special Education Enrollment	% Special Education
97-98	28179	3957	14.0%
98-99	28793	4028	13.9%
99-00	28789	4133	14.3%
00-01	28703	4001	13.9%
01-02	28750* *estimate	4044	14.0%

## Appendix B

### District Contributions to Special Education as a Percentage of the General Fund

	District Contribution	Cost Per Pupil	% General Fund
97-98	\$6,865,234	\$240	3.5%
98-99	\$7,531,686	\$282	4.1%
99-00	\$8,034,259	\$299	4.2%
00-01	\$10,256,588	\$378	4.9%

### District Contributions as a Percentage of Total Special Education Expense

	Total Expense	District Contribution	District % of Total
97-98	\$34,341,067	\$6,865,234	20.0%
98-99	\$36,628,872	\$7,531,686	20.6%
99-00	\$37,227,592	\$8,034,259	21.6%
00-01	\$42,780,578	\$10,256,588	24.0%

### Overall Percentage Increases for School Year 2000-2001 Compared to School Year 1997-1998

Total Special Education Expense	District Contributions	Cost per Pupil
24.6%	49.4%	57.5%

## Appendix C

### Special Education Legal Fees and Judgements for a Cross Section of Marin County School Districts

<u>Year</u>	<u>District A</u>	<u>District B</u>	<u>District C</u>	<u>District D</u>	<u>District E</u>
96-97	\$ 4,217	\$ 9,410	\$ 42,993	\$ 6,305	\$ 245
97-98	27,045	29,469	248,208	204,190	12,182
98-99	12,603	8,361	197,101	336,051	1,140
99-00	2,252	4,900	70,588	157,112	-
00-01	2,869	9,730	213,705	125,401	-
<u>Totals</u>	\$ 48,986	\$ 61,870	\$ 772,595	\$ 829,059	\$ 13,567

Although size of district is one factor in the amount of legal fees and judgements, it is by no means the controlling factor. A single due process case can produce six figure legal fees and judgements. To avoid unfair comparisons between districts, the Grand Jury has chosen to present this cross section cloaked in anonymity.